

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRANDON S. SMITHSON,

Petitioner,

v.

GUY HALL, Superintendent,
Two Rivers Correctional Institution,

Respondent.

No. CV 05-467-ST

OPINION AND ORDER

MOSMAN, J.,

On August 1, 2007, Magistrate Judge Stewart issued Findings and Recommendation ("F&R") (#50) in the above-captioned case recommending that petitioner's Amended Petition for Writ of Habeas Corpus (#29) be DENIED. An objection to the F&R (#51) was filed on August 17. Respondent filed a response to the objections (#52) on August 20.

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are

addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, the court is free to accept, reject, or modify any of the magistrate judge's F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation, and I ADOPT the F&R as my own opinion.

IT IS SO ORDERED.

DATED this 5th day of November, 2007.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court